

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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CHARLES KELLY,

Petitioner,

v.

Civil No. 2:07-CV-11599

LINDA METRISH,

Respondent,

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**OPINION AND ORDER DENYING A CERTIFICATE OF APPEALABILITY AND  
GRANTING APPLICATION TO APPEAL *IN FORMA PAUPERIS***

On November 21, 2007, this court issued an opinion and order summarily denying Petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254. This court also declined to issue a certificate of appealability. Petitioner has now filed a motion for certificate of appealability, which the court construes as a motion for reconsideration of its prior opinion and order. Petitioner has also filed an application to appeal *in forma pauperis*. For the reasons stated below, the motion for a certificate of appealability will be denied, but Petitioner will be granted leave to appeal *in forma pauperis*.

Petitioner initially requests a certificate of appealability. Because the court previously denied Petitioner a certificate of appealability when it summarily denied the petition for writ of habeas corpus, the court will construe Petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to

deny a certificate of appealability in this case. See e.g. *Jackson v. Crosby* 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

The local rules allow a party to file a motion for reconsideration. E.D. Mich. LR 7.1(h). However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). The movant shall not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

Other than conclusory or unsupported allegations, Petitioner has failed to advance any arguments in his motion for a certificate of appealability which show that this court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. Petitioner's request for reconsideration will therefore be denied, because Petitioner is merely presenting issues which were already ruled upon by this court, either expressly or by reasonable implication, when the court summarily denied Petitioner's application for writ of habeas corpus and denied him a certificate of appealability. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

Petitioner has also filed an application to appeal *in forma pauperis*. Although the court has denied a certificate of appealability to Petitioner, the standard for granting an application for leave to proceed *in forma pauperis* ("IFP") is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750,

764 (E.D. Mich. 2002) (citing *United States v. Youngblood*, 116 F. 3d 1113, 1115 (5th Cir. 1997)). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant IFP status if it finds that an appeal is being taken in good faith. *Id.* at 764-65; 28 U.S.C. § 1915(a)(3); Fed. R.App.24 (a). “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although jurists of reason would not debate the court’s resolution of the habeas petition, the issues are not frivolous; therefore, an appeal could be taken in good faith and petitioner may proceed *in forma pauperis* on appeal. *Id.* Accordingly,

IT IS ORDERED that the “Motion For Certificate of Appealability” [Dkt. # 12] is DENIED.

IT IS FURTHER ORDERED the application to proceed *in forma pauperis* on appeal [Dkt. # 11] is GRANTED.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: January 14, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 14, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
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